IN THE HIGH COUT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

TUESDAY THE SIXTEENTH DAY OF NOVEMBER,

TWO THOUSAND FOUR.

Present:

THE HONOURABLE SRI JUSTICE V. ESWARAIAH.

W.P.No.10462 of 2004 and C.C.No. 1211 of 2004.

Between

T.Rajaiah son of Narasaiah,

Aged 52Years, Vemulavada,

Karimnagar district. .. Petitioner (in both Cases)

Writ petition and C..C.

And:

1.The Vice-Chairman and Managing Director,

A.P.S.R.T.C., Musheerabad, Hyderabad.

2.The Depot Manager, A.P.S.R.T.C.,

Vemulavada Depot, Vemulavada.,
Karimnagar district. ..Respondents (both Cases)

Writ petition and C.C**.**

Writ petition No. 10460 of 2004 is filed under Art.226 of the Constitution of India by the petitioner praying that for the reasons stated in the accompanying affidavit this Honourable Court maybe pleased to issue a writ, order or directions more in the nature of writ of mandamus declaring the Office Order dated 20-2-2004 as illegal and set aside the same and consequentially to direct the respondents herein to provide any alternative employment to the petitioner by protecting all benefits including wages and arrears.

Contempt case No. 1211 of 2004 is filed by the petitioner praying to initiate action against the respondents under Sections 10 to 12 of the Contempt of Courts Act, 1971 for not implementing and violation of this Court Orders passed in WPMP No. 13275 of 2004 in W.P. 10462 of 2004 dated 30-7-2004 and punish the respondents in accordance with law.

Counsel for the Petitioner : Sri P.Govindarajulu(in both the cases).

Counsel for the Respondents : Smt.P. Rajani, Standing Counsel for APSRTC

(in both the cases).

The Court made the following :

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Common Order:-

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Heard both the counsel. The petitioner while working as driver in the respondents - Corporation was found medically unfit and he was kept by the respondents under forced leave as per the Office order dated 20-2-2004. He was advised to attend the office without considering to provide any alternative employment and payment of salary to him. Hence the petitioner approached this Court by filing writ. It is stated that the petitioner while working as driver at Vemulavada, was directed to undergo medical check up and for treatment at Taranaka. The Medical Officer at Tarnaka on examination issued a certificate stating that the petitioner is having HIV + Ve. It is a self acquired disease by the petitioner. It does not fall within the meaning of

disability Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation)Act, 1995.. Therefore, the petitioner is not entitled to the protection of his status under the said act. However as per the existing procedure if any of the employee is unfit to do the existing job he can be provided with any alternative employment by the employer. Therefore, the respondents have considered the case of the petitioner and decided to accommodate him in the alternative employment as Cleaner. As per the rules of the Corporation, the petitioner is medically unfit for driving heavy motor vehicle and therefore he is not eligible to drive heavy motor vehicle and was put on leave. As there is no leave at his credit, leave was sanctioned without pay.

It is stated by the learned counsel for the petitioner that as per the medical certificate the case of the petitioner was considered and a decision was taken to provide alternative employment. Accordingly the petitioner's case was referred to the Regional Manager Kareemnagar to provide alternative employment as he is medically unfit to be a driver. Hence the application of the petitioner to provide alternative employment was considered and his seniority was put at serial 2 as a cleaner. As a matter of fact the petitioner is not entitled relief under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Therefore, the impugned Office order of the Depot Manager passed on 20-2-2004 declaring the petitioner medically unfit for the post of driver cannot be said to be illegal and contrary to any of the rules of A.P.S.R.T.C . So the certificate issued by the Senior Medical Officer of APSRTC declaring that the petitioner is unfit for the post of driver in heavy motor vehicle is just and the petitioner is entitled only to alternative employment . Hence writ petition is liable to be dismissed as devoid of merits.

In the result the writ petition is dismissed . There shall be no order as to costs

In view of the decision taken by the Corporation to provide alternative employment as cleaner and placing him at serial no.2 in the seniority list no order further needs be passed in the Contempt Case and accordingly the C.C. is dismissed.

(JUSTICE V.ESWARAIAH)

TSVK.